

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

- V. -

THE BANK OF NEW YORK MELLON and  
DAVID NICHOLS,

## Defendants.

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**NOTICE OF MOTION BY DEFENDANT DAVID NICHOLS  
TO DISMISS THE SECOND AMENDED COMPLAINT**

PLEASE TAKE NOTICE that Defendant David Nichols, upon the accompanying Memorandum of Law in Support of Defendant David Nichols' Motion to Dismiss and the exhibits attached thereto, will move, by and through its undersigned attorneys, before the Honorable Lewis A. Kaplan, United States District Court Judge at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21B, New York, New York 10007, on such date and time as the Court will determine, for an Order under Federal Rules of Civil Procedure 9(b) and 12(b)(6) dismissing all claims asserted against David Nichols in the Second Amended Complaint.

Dated: New York, New York  
August 6, 2012

Respectfully submitted,

SHEARMAN & STERLING LLP

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*Attorneys for Defendant David Nichols*